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2 MR. THOMPSON: Thank you, Mr. Chairman. I
3 do have some concerns, myself, concerning the
4 application of the law. I have read through the
5 legislative analysis and, and although I concur
6 with Ms. Okamoto's position concerning her
7 interpretation of that, I also read into that
8 that there really was no intent of the
9 legislature to be punitive, either, to the
10 extent that you're, you're taking, essentially,
11 an organization that's working very hard to, to
12 correct the problems they have that have been
13 identified through the process of, of starting
14 up and implementing the requirements of the
15 NPDES permit that they originally issued, and it
16 kind of goes back to the same argument before,
17 concerning when you're treading new ground, you
18 don't know where you're going to end up until
19 you get there, and now, we're, we're talking
20 about mandatory penalties that I don't really
21 think were intended to mean this. I think they
22 were intended to really mean we need to penalize
23 people that are--that are--that are being
24 unresponsive. And, and in my case, I think that
25 I feel they've been responsive. They trying to,

1 to correct the problems coming up with
2 solutions, and, and I have to agree with Mr.
3 King and Mr. Lukar [phonetic]. I'm not so sure
4 that we really do have enough information here
5 to say we can legally justify these penalties,
6 when there may be some interpretation in here.
7 one of the things that I will--I will bring up
8 quickly is when Mr. Wiles [phonetic] gave us our
9 indoctrination, myself and George, he talked
10 about when we're sitting in this position, we're
11 the judge and the jury. Well, we are the court.
12 Don't have a lot of case law. Granted, we're
13 not a real court, judge-wise, but in a sense, we
14 are, so maybe we set the case law in this case.
15 I'm not sure. I think there is some room for
16 interpretation concerning whether or not if a--
17 if a TSO had been in place, that these penalties
18 might be less, and that is a process issue. If-
19 -and it does take a while to put one of those in
20 place, but in the meantime, you're accruing
21 penalties that, that short of shutting down the
22 plant entirely when they're still trying to
23 figure out exactly what they have it is the
24 catch 22, as was originally discussed. So I--
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2 I'm amiable to continuing this and see if there
3 might be a better solution to this. I really
4 would like a better interpretation, and maybe
5 it's a function of the State Board, itself,
6 concerning the real intent of mandatory minimum
7 penalties, and how they should be applied. and
8 then, the other piece is, is, you know, it's not
9 clear to me 'cause we don't have a copy of the
10 permit, itself, in here that, in fact, it was
11 intended that each one of those samplings would
12 be a separate violation, versus where you
13 couldn't group those as a violation, based on
14 some criteria not met and, you know, I suspect
15 maybe that is the case, and I'm, you know, if it
16 is, that's fine, but that's kind of where I'm
17 at right now.

18 MR. WRIGHT: Okay. -- prefer not to
19 continue this but Ms. Hagan, do you have any
20 advice to the, the Board? I, I, I personally
21 think that, that our hands are really tied. I
22 think it's pretty straight forward, although I--
23 the only area of question that I had related to
24 Mr. King's questioning about the about the
25 actual events and the dates of those and, and so

1
2 on. I thought there might be some, some wiggle
3 room in, in that arena, but we don't seem to
4 have gone anywhere with that. Ms. Hagan can you
5 advise your Board?

6 MS. HAGAN: Well, I'm, I'm happy to answer
7 questions. I mean, I--like I said earlier
8 unless you can find that the violations did not
9 occur you, you, you do not have discretion to
10 work out a solution or to determine that a
11 lesser amount should be applied. So I think it,
12 it comes down to did the violations occur and
13 they were presented in a discharger monitoring
14 report, or, or do--does an exception apply, and
15 I, I, I do agree with the prosecution staff that
16 the statute--the statute that provides the
17 exceptions specifies wastewater treatment
18 plants. And so perhaps, you know, a legislative
19 fix might be the most appropriate, but,
20 obviously, if you want to continue the hearing
21 and get more information on the nature of the
22 violations that's obviously some--something you
23 can do, if you want to do that.

24 MR. WRIGHT: Okay. Let's throw a motion out
25 -- speak to a motion.

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2 MR. KING: I, I move that we continue this
3 matter for a future hearing.

4 MR. WRIGHT: Okay. We have a motion to
5 continue this matter. Do we have any --Mr.
6 Robertus, any date in the future that--

7 MR. ROBERTUS: [Interposing] I presume the
8 separation of function would continue, so I
9 think you have to address that question to Mike
10 McCann.

11 MR. WRIGHT: Mr. McCann?

12 MR. MCCANN: That--that's difficult. We
13 have quite a few items coming up.

14 MR. WRIGHT: Mm-hmm.

15 MR. MCCANN: I'm going to say August, at the
16 earliest, our August Board meeting, maybe
17 September.

18 MR. WRIGHT: I just want to make sure staff
19 has adequate time - - .

20 MR. MCCANN: Right, right, yeah.

21 MR. WRIGHT: Together with SOCWA.

22 MR. MCCANN: Yeah, I'm not sure, at this
23 point, how much more work it's going to be. We
24 do have a full schedule of items coming up. I
25 would say August at the earliest, maybe Sep--we

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2 easier if I had my copy in front of me. I'm
3 sorry. The effluent limitations are identified
4 on page 13 in table eight. And then, the
5 monitoring requirements, or the, the monitoring
6 requirements are on attachment E to that, E-11,
7 where it sets out the monitoring locations, so.

8 MR. WRIGHT: Okay. So we have closed the
9 hearing, but I just--this--your, your
10 information--

11 MR. HAAS: [Interposing] I wanted--

12 MR. WRIGHT: --relates to the, the --
13 notion of, of continuance.

14 MR. HAAS: That's correct.

15 MR. WRIGHT: Okay.

16 MS. HAGAN: Mr. Chair, might I just offer
17 that it--

18 MR. WRIGHT: [Interposing] Ms. Hagan?

19 MS. HAGAN: --it, it might be useful or the
20 Board could consider whether it would be useful
21 to reopen the hearing and walk through some of
22 the provisions in the NPDES permit that might
23 provide more clarity for the Board Members. And
24 so, I just suggest that as an option.

25 MR. WRIGHT: Okay. That's -- would you--we

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2 defer action on this until after lunch? Is
3 that--

4 MS. HAGAN: [Interposing] that's certainly
5 possible.

6 MR. WRIGHT: --one of the alternatives.

7 MS. OKAMOTO: Mr. Chair, if we are going to
8 reopen the hearing, I do have a document with me
9 that would perhaps provide the Board a little
10 bit more clarity, as far as the intent of the
11 MMP provisions we--and about the State Board
12 recalled the MMP question and answer, and I do
13 have a copy of that which was provided by the
14 Office of Chief Counsel for guidance to Regional
15 Boards when this statute was enacted.

16 MR. WRIGHT: Okay. We, we have a motion on
17 the floor. What's, what's the--what are the
18 wishes of the Board? You want to look--take
19 continue this until after lunch or, you know,
20 after lunch, until we've had a chance to--Mr.
21 King?

22 MR. KING: [Interposing] -- get a--let a
23 subsidiary motion here. We--we've--

24 MR. WRIGHT: [Interposing] Well, a
25 substitute motion, I'd call it.

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MR. KING: Okay, substitute. I, I haven't withdrawn the motion and I'd like to allow--if people speak in favor of the motion and--

FEMALE VOICE 1: [Interposing] Sure.

MR. KING: --against the motion?

FEMALE VOICE 1: That's appropriate.

MR. KING: Thank you.

MR. WRIGHT: Okay. Any discussion regarding Mr. King's motion? Does anybody wish to offer a substitute?

MALE VOICE 3: I want to go along with Mr. King's motion. I think it's important that we investigate deeper into the permit. However, I, you know, I'm, I'm, I'm torn between the fact that we're looking at a permit that's been in place for a while, and, and we're not going to rule on the permit, itself, but we're going to rule on what the permit means, and that is contrary to where we should be standing on this, but, um at this point, I, I would--I would venture to go along with that, with that--with the motion.

MR. WRIGHT: Any other comments? Are you speaking to the motion, Mr. King?

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MR. KING: I have nothing to -- call to question.

MR. WRIGHT: Okay. We have a motion to continue this item, and I'm -- from what we've heard the purpose of the continuance is to be able to, to go back and look at the , NPDES permit. Anything else? Do us any other specific instructions for staff, Mr. Loveland?

MR. LOVELAND: I think -- for me to put it off and just discuss the permit, if we're not going to use that time to get into the policy issues and what we're trying to accomplish with the water supply and, and environmental issues with discharge and how to mold this into--to a policy that makes sense. If it's just on the-- on the permit, I have no problem -- today, and I think--I think those issues are probably fairly clear. I'm not sure I, I, I buy the, the fact that, that the legislative intent -- discretionary ability is, is compromised here, or not compromised. It seems to me that we're between a rock and a hard place with, with the mandatory fines, here, but the overall question and, and maybe it's--I'd just as soon see SOCWA

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2 take it to the State Board and, and appeal it on
3 that then us get into a discussion on what we're
4 trying to accomplish on a policy level. - - on
5 this permit I'm I think we can go around the
6 mulberry bush for a long time--

7 MR. WRIGHT: [Interposing] I agree and it -
8 - I'm not sure--we can discuss the policy issues
9 at a later meeting, but the policy questions
10 are much bigger than, than this Regional Board.
11 They, they are policy matters that need to come
12 from, from all the Regional Boards, from the
13 State Board and filter back down to the Regional
14 Boards 'cause what we're now is applying
15 policies that have been set up by the by the
16 State and I don't think we have a, a lot of
17 leeway, so I, I intend to vote against the
18 motion to continue the, the matter. I think we
19 need to settle it today. I would I just want
20 to add that--an--and I would ask Mr. King that,
21 if, if policy is what we're trying to affect,
22 then, potentially, it's better that we, um vote
23 to put the ACL in place and vote for the fine,
24 and push this to the State Board faster than, um
25 than would be as if we deferred it because it's

1
2 be another three or four months before we do
3 that, and then effectively, as effective as we
4 can, lobby the Board to look at the policy, so
5 th--that's really my question to you on the--on
6 the continuance motion and--

7 MR. KING: [Interposing] the--no, I -- my
8 motion had nothing to do with our opening this
9 up and, and playing the legislature and, and,
10 and making matters of policy injecting
11 ourselves into something that's straight
12 statute. My motion was driven more on the fact
13 that kind of analogous to, to watching a, a
14 classic boxing, and then, watching -- see today
15 on the TV. I--I've seen better fights. I've
16 seen the law applied in better instances, and
17 I've seen better application of the law to the
18 facts, and, and I want to see the burden of
19 proof met in this case before we go impose
20 something that's a mandatory minimum penalty.

21 MR. WRIGHT: Okay. Any other discussion of
22 the motion? the motion is to continue, but I,
23 I--it'd be--I'd like to see as much specific
24 instruction as possible to--could you get some
25 specific guidance to staff, or do you think

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they--

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MR. KING: [Interposing] I think I've been
specific.

5

MR. WRIGHT: Okay. All right. Any other

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guidance for staff, if we continue this? Okay.

7

Well, maybe that should come after the motion.

8

Okay. All those in favor of the motion, raise

9

your hands. The motion, one, two, three, four.

10

Those against the motion, one, two, three, four.

11

Wait a minute. Oh, we're missing--yeah. The

12

motion fails. Okay. On a tie, the motion

13

fails, so now to the staff recommendation, I

14

assume that's, that's where we're at now. Is

15

there a motion to approve the staff

16

recommendation?

17

MALE VOICE 4: So move.

18

MR. WRIGHT: Okay. Is there a second?

19

MALE VOICE 5: Second.

20

MR. WRIGHT: All those in favor of the staff
recommendation?

21

22

MR. KING: Can, can I make a little--

23

MR. WRIGHT: [Interposing] Pardon?

24

MR. KING: Can I make a comment?

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MR. WRIGHT: of course.

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2 MR. KING: It--I, I would love to send this
3 up to the State Board with a statement from our
4 Regional Board stating that this may be a, a
5 case where they should look at MMPs and the
6 application as, as, as it is applied here. So-
7 -and that might not be appropriate to be
8 applying to this type of situation.

9 MR. WRIGHT: who made the motion was it - -
10 is that an acceptable addition to your motion?

11 MALE VOICE 6: Yes.

12 MR. WRIGHT: A second or is that an
13 acceptable addition? Any discussion to the
14 motion? All those in favor of the motion.

15 MS. HAGAN: Excuse me, Mr. Chairman?

16 MR. WRIGHT: Yes. - - .

17 MS. HAGAN: Okay. I just wanted to get
18 clarity as to how that will affect the motion to
19 adopt the ACL order.

20 MR. WRIGHT: - - .

21 MS. HAGAN: It's just a statement in the
22 record that the Board that would be included in
23 a Board votes, if the Board were to approve the
24 staff recommendation.

25 MR. WRIGHT: Yes. It doesn't--it--yeah.

1
2 It's just a message sent on high. So all those
3 in favor of the motion? I guess we better have
4 a show of hands. Raise your hands. One, two,
5 three, four. The motion fails.

6 MALE VOICE 7: - - .

7 MR. WRIGHT: Catherine, where are we? We
8 have two failed motions.

9 MS. HAGAN: Consulting my motion book at the
10 moment.

11 [Laughter]

12 MR. WRIGHT: Well, we don't have a
13 recommendation, basically.

14 [Crosstalk]

15 MR. WRIGHT: Well, Catherine, we, we simply
16 don't have a recommendation.

17 MS. HAGAN: Right. And I'm just trying to
18 figure out, procedurally, if the --what occurs
19 and I mean, obviously, the action won't occur
20 today, but I'm trying to decide if there needs
21 to be anything done affirmatively wi--with
22 regard to this item, or if it will just languish
23 or be brought back, so I--one thing I can do is
24 look at it over the lunch break.

25 MR. WRIGHT: yeah, okay. That--my

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assumption is--

MS. HAGAN: [Interposing] and it may be that
I don't have--

MR. WRIGHT: --that this move on up to the
State, but, uh--

MS. HAGAN: I don't think that would--I--
that could be the result, but I don't think so,
so--

MR. WRIGHT: [Interposing] I mean, that
could be a, a recommendation of this board--

MS. HAGAN: [Interposing] Okay.

MR. WRIGHT: --that we are incapable of--I
mean, I shouldn't say incapable of making--

[Laughter]

MR. WRIGHT: --unable.

MS. HAGAN: So if you're--

MR. WRIGHT: [Interposing] - - .

MS. HAGAN: --amenable, I would, would like
just an opportunity to look at--look at the - -

MR. WRIGHT: All right. We'll carry this
over now after lunch. Let's take a break for
lunch. We'll be back here in at 2:00.

[END OF DS3000069.WMA]

[START OF DS3000070.WMA]

MR. WRIGHT: --approve the staff
recommendation and Catherine have you had a
chance to think about this?

MS. HAGAN: I have and I--one possibility
for the, the Board to consider is whether a
motion to postpone the matter with certain
specific direction, like parties to brief legal
issues or a confidential memo from me, as the
Board's Advisor, might be helpful, if that would
change the b--the composition of the votes.
That would be one way to move the matter along.
alternatively one thing the Board could
consider doing is asking the Executive Officer--
or making a motion that the Executive Officer
explore with the State Board management if they
would be inclined to hear this matter. just
sort of - - and, on, on the complaint that
exists, I don't think there's a--there's not a
referral process, so it would be a matter of
inquiring and if you were to do something like
that, I would recommend that you ensure that the
discharger would waive the 90 day--right to a
90 day he--a 9--a hearing within 90 days because

1 it would be a new hearing. So those are some
2 thoughts. Otherwise, I think the--if the Board
3 takes no action today the matter would really
4 fall back in the court of the prosecution team
5 to decide whether they will bring the matter
6 back, revise it withdraw it, or resubmit it
7 with additional information.
8

9 MR. WRIGHT: Okay. Board Members my
10 suggestion before we talk about this is that we
11 -- send this up to the Board. We, we have
12 responsibilities to take action at, at this
13 level and it's a problem we need to deal with,
14 so with that anybody? George?

15 MR. LOVELAND: our made a suggestion there,
16 or gave us an option that I thought was a pretty
17 good one, and that is just have the two sides
18 brief us, which would address Mr. King's issues
19 about how adequately they've identified the, the
20 legal arguments or not and bring it back and
21 act on it.

22 MR. WRIGHT: Mr. King?

23 MR. KING: Yeah, I would agree with that. I
24 would maybe provide like a page limit that,
25 that both sides could submit legal briefs and

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2 maybe ten pages, maximum not introducing any
3 new exhibits, but just making citations to
4 existing documents and the record submit that
5 within 30 days or so, and then, bring this
6 matter back in due course, and that's a motion
7 that would be a full continuance to continue
8 this matter with additional legal briefing, no
9 more than ten pages, ordinary pleading form,
10 citations only to existing documents on the
11 record.

12 MR. WRIGHT: So that's a motion. Is there a
13 second?

14 MALE VOICE 8: I'll second.

15 MR. WRIGHT: Any discussion to the motion?
16 Catherine?

17 MS. HAGAN: May I just inquire no reply
18 briefs, just, um briefs submitted
19 simultaneously by both parties?

20 MR. KING: Correct.

21 MS. HAGAN: - - -

22 MR. KING: yeah, a deadline 30 days from
23 now, un--unless such day is on a weekend, then,
24 the--that following Monday ten pages, no
25 supplemental briefs after that.

MR. WRIGHT: Okay. All those in favor of the motion, say aye. Aye.

MALE VOICES: Aye.

MR. WRIGHT: Those against. The motion is approved unanimously. Okay. Ms. Okamoto and Ms. Chen, - - clear? Okay. And let's see. Ms. Hagan anything that we need to report out on closed session?

MS. HAGAN: The Board discussed a matter under item 14, which is the potential exposure to--or significant exposure to litigation and that's, that's all that needs to be reported.

MR. WRIGHT: Okay. Okay. - - anything else for the good of water quality in the region? Nothing? We are adjourned.

[Background noise]

[Crosstalk]

MALE VOICE 9: Mr. Chairman, - - .

MR. WRIGHT: Thanks.

[Crosstalk]

MALE VOICE 9: You know, we're going to-- we'll try to resolve it.

MR. WRIGHT: I think you will. I have a feeling--

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[Crosstalk]

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MS. CHEN: Thank you so much.

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MR. WRIGHT: Nice presentation. Thank you.

5

[Crosstalk]

6

[Background noise]

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[END OF DS3000070.WMA]

C E R T I F I C A T E

I, Teresa Salazar, certify that the foregoing transcript was prepared using standard electronic transcription equipment and is a true and accurate record.

Signature

Teresa Salazar

Date August 20, 2009

From: "Ivy B Capili" <ICapili@bhfs.com>
To: "Jeannette Bashaw" <JBashaw@waterboards.ca.gov>
CC: "Steven L Hoch" <SHoch@bhfs.com>, "Kari N. Vozenilek" <KVozenilek@bhfs.com>
Date: 1/8/2010 3:26 PM
Subject: Exhibits B-I - Petition for Review on behalf of South Orange County Wastewater Authority/South Coast Water District
Attachments: Exh I.pdf; Exh F.pdf; Exh E.pdf; Exh D.pdf; Exh C.pdf; Exh B.pdf; Exh H.pdf; Exh G.pdf

It looks like the balance of the exhibits will all transmit by just one more email. So, this will be the last email with respect to the Petition for Review on behalf of South Orange County Wastewater Authority/South Coast Water District.

Thank you again for your help. I will call you on Monday to follow up.

<<Exh I.pdf>> <<Exh F.pdf>> <<Exh E.pdf>> <<Exh D.pdf>> <<Exh C.pdf>> <<Exh B.pdf>> <<Exh H.pdf>> <<Exh G.pdf>>

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EXHIBIT B



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
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Arnold Schwarzenegger
Governor

Certified Mail – Return Receipt Requested
Article Number: 7008 1140 0002 4285 4398

December 10, 2009

In reply refer to:
704670: bkelley
WDID: 9 000017S6

Mr. Thomas R. Rosales
General Manager
South Orange County Wastewater Authority
34156 Del Obispo Street
Dana Point, CA 92629

Dear Mr. Rosales:

**SUBJECT: REQUEST FOR PERMIT MODIFICATION BY SOUTH ORANGE COUNTY
WASTEWATER AUTHORITY FOR ORDER NO. R9-2006-0054, NPDES NO.
CA0107417, DISCHARGE FROM THE SAN JUAN CREEK OCEAN OUTFALL TO
THE PACIFIC OCEAN**

This is in response to your letter dated October 29, 2009, requesting modification of Order No. R9-2006-0054, NPDES No. CA0107417, for the South Orange County Wastewater Authority (SOCWA) discharge to the Pacific Ocean via the San Juan Creek Ocean Outfall (the Order). Specifically, SOCWA is requesting that the NPDES permit be amended to change the point of compliance of the technology based effluent limitations (TBELs) for the South Coast Water District (a member agency of SOCWA) Groundwater Recovery Facility (GRF) from its current location at the GRF to the San Juan Creek Ocean Outfall combined effluent monitoring station M-001. After a thorough review of the information provided in your October 29, 2009 request for modification, the San Diego Regional Water Quality Control Board (Regional Water Board) has determined that moving the compliance point for TBELs applicable to the GRF would not be in conformance with state and federal regulations. Applicable federal NPDES federal regulations in 40 CFR 122.62 - which the Regional Water Board is legally bound to follow - allow modification of NPDES permits in only very limited circumstances, none of which is applicable here. Accordingly your NPDES permit application for amendment is denied.

Your October 29, 2009, letter asserts that the change in monitoring point imposed in the 2006 NPDES Permit was based on the Regional Water Board's mistaken application of technical standards, mistaken interpretations of law; and a lack of new information as justification for new permit conditions. SOCWA's basis for these assertions includes the following points:

California Environmental Protection Agency

- The 2006 NPDES Permit erroneously applies the Ocean Plan standards to the GRF
- Changes in the 2006 NPDES permit resulted from a misinterpretation of the United States Environmental Protection Agency's (USEPA's) position with respect to Publicly Owned Treatment Works (POTWs);
- There is no discharge to waters of the United States at the GRF;
- There was no information at the time of the 2006 NPDES permit issuance regarding the operational aspects of the GRF and the impacts on the Latham Plant;
- Other NPDES Permits allow brine discharge to be blended at outfalls; and
- There was no need to establish discharge criteria to establish a monitoring program for the GRF.

Regional Water Board responses to these points are shown below. The Regional Water Board has also prepared the attached memorandum entitled, "Application of Technology-Based Effluent Limitations for Discharges to the Pacific Ocean in the San Diego Region" dated December 10, 2009 (Ocean Discharge Memo), which contains additional supporting information.

1) The 2006 NPDES Permit erroneously applies the Ocean Plan standards to the GRF

SOCWA asserts that the GRF is not an industrial discharger so the Ocean Plan standards do not apply. As discussed in the attached Ocean Discharge Memo, the Regional Water Board has historically for many years considered, brine discharges as industrial discharges for purposes of applying state and federal water quality regulations, including the application of Ocean Plan Table A TBELs. This is also consistent with the State Water Resources Control Board's (State Water Board) interpretation of the application of the Table A TBEL's. The Ocean Plan Table A TBELs are directly applicable to brine discharges such as the discharge from the GRF and are correctly and appropriately applied in the Order.

2) Changes in the 2006 NPDES permit resulted from a misinterpretation of EPA's position with respect to POTWs

SOCWA asserts that the USEPA December 8, 2004, letter (USEPA 2004 Letter) is discussing secondary treatment TBELs with respect to POTWs. While this is correct, the application of TBELs, regardless of the category of discharge or facility, is the same. For industrial facilities, TBELs include national effluent limitations guidelines (ELGs) established by USEPA as well as any established by the State Water Board such as the Ocean Plan Table A effluent limitations. For publicly owned treatment works (POTWs), TBELs are derived from national secondary treatment standards. The last sentence of

the USEPA 2004 Letter states, "Technology-based requirements are to be met with treatment technology, not non-treatment such as flow augmentation (40CFR125.3(f)) or dilution that could occur as various effluents mix in the outfall." Code of Federal Regulations (CFR) Section 125.3(f) is applicable to all technology-based treatment requirements, not just the secondary treatment TBELs.

3) *There is no discharge to waters of the United States at the GRF*

SOCWA asserts that the discharge from the GRF is to the Chiquita Canyon land outfall and is not a direct point source discharge to a water of the United States until the discharge co-mingles with other discharges to the San Juan Creek Ocean Outfall and the combined discharges enters the Pacific Ocean through the diffuser ports of the ocean outfall. SOCWA also asserts that the GRF facility does not add any "pollutant" or combination of pollutants to "waters of the United States" from a "point source".

The NPDES permit for SOCWA San Juan Creek Ocean Outfall does regulate the point source discharge from the San Juan Creek Outfall to the Pacific Ocean. Water quality-based effluent limitations in the Order apply to the combined discharge and take into account mixing of the total ocean outfall discharge with ocean water through incorporation of an established dilution factor. The discharge from the ocean outfall is comprised of several separate, individually and independently operated and maintained treatment facilities, each designed to treat a certain type of waste stream. Accordingly, TBELs must be applied to each treatment facility prior to any mixing with other effluents or dilution with receiving water in accordance with applicable federal NPDES regulations at 40 CFR 125.3 (f). By letter dated December 8, 2004 (included as Attachment 3 of SOCWA's submittal) USEPA directly addressed this issue and concurred with the Regional Water Board's decision to establish compliance with secondary treatment TBELs at each sewage treatment plant discharging to SOCWA's Aliso Creek Ocean Outfall. The USEPA 2004 Letter goes on to further specify that the Aliso Creek Ocean Outfall structure does not convey waste to a treatment plant and is not included in the definition of a treatment plant. This same interpretation would apply to any facility discharging to the land outfall or ocean outfall structures since those structures do not provide any further treatment of the waste streams.

TBELs are developed with consideration of available treatment technologies and establish uniform standards defining the minimum level of treatment that can be consistently achieved without relying on the assimilative capacity of the receiving waters. Furthermore, the USEPA is in the process of developing Effluent Limitation Guidelines (ELGs) for drinking water treatment facilities including potentially desalination concentrates. USEPA considers the point source discharge of desalination concentrates to be adding a 'pollutant' or combination of pollutants to 'waters of the United States' and thereby subject to regulation under NPDES requirement, including any applicable TBELs.

4) There was no information at the time of the 2006 NPDES permit issuance regarding the operational aspects of the GRF and the impacts on the Latham Plant

The Regional Water Board understands that SOCWA began full operation of the GRF after the adoption of the 2006 NPDES Permit. Since beginning full operation, SOCWA has found that the source ground water is higher in solids than previously expected which results in violations of the effluent limitations for total suspended solids (TSS), settleable solids (SS), and turbidity. SOCWA initially elected to discharge the GRF brine to SOCWA's JB Latham Wastewater Treatment Plant as a temporary measure to avoid Regional Water Board enforcement action for violation of these effluent limitations. SOCWA does not want to continue discharging to the Latham Treatment Plant because the facility is being upgraded to provide a sustainable source of recycled water and the high salinity in the brine could adversely affect the quality of recycled water.

The Regional Water Board established the effluent limitations and compliance points in the Order in accordance with the California Ocean Plan and other applicable federal and state laws and regulations. It is the responsibility of the discharger to properly design, build, operate and maintain any treatment facilities used to comply with the water quality-based and technology-based effluent limitations contained in the NPDES permit. Under California Water Code section 13360, the Regional Water Board may not "specify the design, location, type of construction, or particular manner" of discharger compliance with waste discharge requirements or other orders, and dischargers can comply "in any lawful manner". This restriction is a shield against unwarranted interference with the ingenuity of the party subject to waste discharge requirements who can elect between available strategies to comply with the standard. Accordingly the Order does not prevent SOCWA from using any available appropriate treatment technology or other method to comply with the TBELs. Diverting the GRF brine discharge to the Latham Treatment Plant is by no means the only method of compliance available to SOCWA. Employment of additional treatment facilities to provide additional filtration and solids removal at the GRF to produce a brine discharge in conformance with the Order's TBEL's is another alternative viable means of ensuring compliance.

The Regional Water Board understands SOCWA's difficulties in meeting the TBELs established for the GRF facility caused by an unanticipated change in the quality of the source water. If SOCWA develops an appropriate plan to meet the TBELs the Regional Water Board may consider issuance of a Time Schedule Order which could provide a shield against further Regional Water Board imposition of administrative civil liability penalties and allow the discharge of brine to the ocean outfall to continue while a solution is being implemented.

5) Other NPDES Permits allow brine discharge to be blended at outfalls

It is true that TBELs are incorrectly applied at certain facilities in the San Diego Region that discharge to the Pacific Ocean, as documented in the Ocean Discharge Memo. In those few exceptions where the TBELs are inconsistent with state and federal regulations, changes to the NPDES permits to correctly implement the TBELs at each facility will be made during the next permit reissuance process.

6) There was no need to establish discharge criteria to establish a monitoring program for the GRF

SOCWA correctly asserts that at the Regional Board hearing of May 13, 2009, Mr. John Robertus, former Regional Water Board Executive Officer, indicated that one of the reasons why the monitoring point had to be moved was because of the need to obtain information on the brine discharge. SOCWA argues that collecting information at any given point is not connected to having a monitoring point for the purposes of discharge requirements.

The Regional Water Board may require discharge monitoring for many reasons beyond the need to document compliance with effluent limitations. In this case the Regional Water Board established TBELs for the brine discharge with the point of compliance at the GRF. Accordingly, the Order correctly requires that the compliance monitoring for the brine discharge be performed upstream of any co-mingling with other waste discharges.

In closing the Regional Water Board appreciates the fact that the GRF is an important part of a long-term strategy by SOCWA and its member agencies to reduce dependence on imported water in light of the protracted drought on both the Colorado River and in the Sierras, and increased regulation of water transfers from the Bay-Delta.

It is important that projects of this type be implemented in a manner that ensures full compliance with applicable state and federal laws and regulations.

The attached Ocean Discharge Memo documents the legal requirements and basis for establishing the TBELs in the Order. As previously discussed the GRF brine discharge is subject to the Ocean Plan Table A TBELs prior to any mixing with other effluents or dilution with receiving water. Thus, the application of TBELs to the GRF and the establishment of the compliance point at the facility prior to mixing with any other waste streams are correctly implemented in the Order. There is no basis to amend the Order as requested by SOCWA and the Regional Water Board will take no further action on the SOCWA's October 29, 2009 request for permit modification.

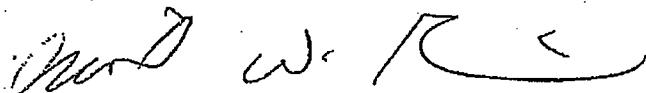
Mr. Thomas R. Rosales
South Orange County Wastewater Authority

- 6 -

December 10, 2009

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact Brian Kelley at (858) 467-4254 or bkelley@waterboards.ca.gov.

Sincerely,



David W. Gibson
Executive Officer
San Diego Regional Water Quality Control Board

Enclosure

cc via email: (w/encl.)

Betty Burnett, District Counsel, South Coast Water District
Mike Dunbar, General Manager, South Coast Water District
Pat Chen, Miles Chen Law Group
Brennon Flahive, Environmental Compliance Administrator, SOCWA
Ken Schiff, Southern California Coastal Water Research Program
Mayumi Okamoto, State Water Resources Control Board, Office of Enforcement
Catherine Hagan, State Water Resources Control Board, Office of Chief Counsel
Brian Kelley, San Diego Regional Water Board

Order No.	R9-2006-0054
NPDES No.	CA0107417
CIWQS Place ID	704670
WDID	9 000017S6
Reg. Measure No.	309059
Party ID	41385



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

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<http://www.waterboards.ca.gov/sandiego>

DATE: December 10, 2009

TO: David T. Barker
Branch Chief
SURFACE WATER BASINS BRANCH

FROM: *Brian D. Kelley*
Brian D. Kelley
Senior Water Resource Control Engineer
CORE REGULATORY UNIT

**SUBJECT: APPLICATION OF TECHNOLOGY-BASED EFFLUENT LIMITATIONS
FOR DISCHARGES TO THE PACIFIC OCEAN IN THE SAN DIEGO
REGION**

Purpose

This memo evaluates the current NPDES permit regulation of discharges to the Pacific Ocean by the San Diego Regional Water Quality Control Board (Regional Board) in the San Diego Region. The following issues are addressed:

- 1) Discussion of relevant regulations regarding the application of technology-based effluent limitations (TBELs) for discharges to the Pacific Ocean,
- 2) Consistency of current application of TBELs to various individual NPDES permitted ocean discharges in the San Diego Region, and
- 3) Consideration of application of Ocean Plan TBELs for brine discharges to bays, estuaries and inland surface waters in the San Diego Region.

Relevant regulations regarding the application of TBELs for discharges to the Pacific Ocean

Regulations governing waste discharges to the Pacific Ocean in California are, in part, contained in the State Water Resource Control Board (State Water Board), Water Quality Control Plan for Ocean Waters of California (Ocean Plan). The Ocean Plan was last updated in 2005 and includes effluent limitations for grease and oil, suspended solids, settleable solids, turbidity, and pH as listed in Table A. These effluent limitations apply to publicly-owned treatment works (POTWs) and industrial discharges for which effluent limitations guidelines have not been established pursuant to Sections 301, 302,

California Environmental Protection Agency

304, or 306 of the Federal Clean Water Act. The *Final Functional Equivalent Document, Amendment of the Water Quality Control Plan for Ocean Waters of California* dated September 1, 2000, refers to the Table A Ocean Plan Effluent Limitations as technology-based effluent limitations (TBELs).

The United States Environmental Protection Agency (USEPA) regulations at 40 CFR 122.44(a)(1) require permits to include TBELs promulgated by the USEPA under Section 301 of the CWA. USEPA promulgated TBELs for POTWs as secondary treatment regulations at 40 CFR Part 133. Secondary treatment is defined in terms of three parameters [5-day biochemical oxygen demand (BOD₅), TSS, and pH] and TBELs are established for these parameters. The TBELs from the Ocean Plan and the secondary treatment TBELs are compared and the more stringent TBEL is included in NPDES permits. The USEPA also issues Effluent Limitation Guidelines (ELGs) which are technology-based regulations to control industrial wastewater discharges. These regulations are established to protect human health and maintain and enhance water quality. The ELGs are TBELs based on the performance of treatment and control technologies.

The Regional Board has historically considered brine discharges to be industrial discharges. Demineralization/desalination for production of a high quality water supply involves a process of removing minerals or minerals salts from a source water, such as groundwater or seawater. Demineralization/desalination most often uses a reverse osmosis (RO) process resulting in a concentrated brine waste. In addition to the concentrated brine waste, the RO process may result in other wastes generated by filter backwashing, cleaning of other process components, or chemical additions used in the treatment process. All of these wastes may contain pollutants that could cause excursions of narrative or numerical water quality objectives including, but not limited to, the Ocean Plan Table A constituents. Also, because USEPA has not promulgated ELGs for brine discharges, the Ocean Plan Table A TBELs are the applicable limitations for such discharges to the Pacific Ocean. The USEPA has ELGs under development for drinking water treatment facilities including desalination concentrates. The potential ELGs are discussed on USEPA's Industrial Regulations web page. The brine discharge from the Poseidon Resources Corporation was determined to be an industrial discharge during the permitting process. Furthermore, the State Water Board has informed the Regional Board that industrial discharges for purposes of the Ocean Plan are broadly defined and that Ocean Plan Table A TBELs would apply to water treatment and brine waste discharges. Also, in August 2005, State Water Board made available a draft NPDES Permit Development Guide which explicitly classifies water treatment facilities as industrial facilities (page 4-2). Based on all of these considerations, the Ocean Plan Table A TBELs are directly applicable to brine discharges.

USEPA has promulgated regulations on technology-based treatment requirements in permits at Code of Federal Regulations Title 40, Section 125.3 (40CFR125.3). Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators [40CFR.125.3(f)]. Based on 40CFR125.3, TBELs including Ocean Plan Table A TBELs, secondary treatment TBELs, and ELGs apply at the facility prior to any mixing with other effluents or dilution with receiving water. The USEPA has repeatedly confirmed this

approach in written comments over the years on various Regional Board tentative NPDES permit actions.

Consistency of current application of TBELs among the various ocean discharges in the San Diego Region

The largest volumes of discharges to the Pacific Ocean in the San Diego Region are from sewage treatment plants (or POTWs) and power plants; there are also several other smaller volume miscellaneous discharges including brine discharges. The attached Table 1 summarizes discharges to the Pacific Ocean regulated by the Regional Board through NPDES permits that contain TBELs.

Appropriate TBELs are applied to all ocean discharges for sewage, brine, and power plant cooling water as shown in the attached Table 1. In some cases, multiple facilities discharge through the same ocean outfall. Table 1 identifies the discharges which have TBELs applied to the individual facility effluent or to the co-mingled (or combined) effluent from several facilities.

There are several brine waste discharges resulting from groundwater desalination and recycled water operations regulated in the San Diego Region. Recently, due to water resource development projects spurred by drought conditions, there has been an increase in proposed projects that would produce a brine waste. Most of these facilities discharge brine waste into an existing ocean outfall that is also used for treated sewage discharge.

As shown in Table 1, for the majority of discharges to the ocean, TBELs are applied correctly at the facility prior to mixing with other effluents or dilution with receiving water. There are, however, a few discharges where the compliance point for TBELs is located downstream of a facility after mixing with other effluents discharging to the same ocean outfall.

Some degree of inconsistency between waste discharge requirements for similar waste discharges is not uncommon. This may be due to the fact that permits are not renewed at the same time or the fact that different permit writers prepare each permit and each permit writer has discretion on where to establish a compliance point. Also, with time, policies are revised and their interpretation is refined and there is a time delay when the updated plans, policies, and regulations are incorporated into existing NPDES permits. This development is reflected subsequently in permits as each one becomes due for reissuance. An example of an inconsistency can be seen between the National Pollutant Discharge Elimination System (NPDES) permit for the City of Oceanside (Order No. R9-2005-0136, adopted on August 10, 2005) and two NPDES permits for South Orange County Wastewater Authority (SOCWA; Order Nos. R9-2006-0054 and R9-2006-0055, adopted August 16, 2006).

The City of Oceanside operates the Brackish Groundwater Desalination Facility (BGDF), which is regulated under Order No. R9-2005-0136. Treatment at the BGDF includes cartridge filtration (microfiltration). Solids removed by the filters are disposed

of, along with the filters, as solid waste. Treated sewage from two City of Oceanside POTWs and brine from the BGDF are discharged to the Oceanside Ocean Outfall. At the three Oceanside facilities regulated under Order No. R9-2005-0136, some of the TBELs are applied to the combined City of Oceanside effluent and some to the individual POTWs. The two POTWs have secondary treatment TBELs applied to each facility, but the BGDF has no individual facility TBELs. Ocean Plan Table A TBELs for oil and grease, settleable solids and turbidity are applied to the combined effluent only.

The South Orange County Wastewater Authority (SOCWA) has a number of industrial discharges to their two ocean outfalls in addition to treated sewage discharges. SOCWA's NPDES Order No. R9-2006-0054 for the San Juan Creek Ocean Outfall regulates discharges from the Segunda Deshecha (M02) Flood Control Channel urban runoff treatment system, the City of San Juan Reverse Osmosis Water Treatment Plant, and the South Coast Water District Groundwater Recovery Facility (GRF). SOCWA's NPDES Order No. R9-2006-0055 for the Aliso Creek Ocean Outfall regulates discharges from the Shallow Groundwater Unit and RO brine discharges from the Irvine Desalter Project. Ocean Plan Table A TBELs have been applied correctly at each of SOCWA's facilities individually and not to the combined ocean outfall discharge.

In those few cases where the TBELs are inconsistent with state and federal regulations, the Regional Board will make changes to the NPDES permits to implement the TBELs at each facility during the next permit reissuance process. It is anticipated that there will continue to be an increase in requests for NPDES permits for brine discharges. It is important to consistently apply the Ocean Plan Table A TBELs to all ocean discharges, including brine discharges. In the future, the Ocean Plan Table A TBELs, and all TBELs, will be appropriately applied to each facility's discharge.

Consideration of application of Ocean Plan TBELs for brine discharges to all surface waters in the San Diego Region

The Ocean Plan Table A TBELs for grease and oil, suspended solids, settleable solids, turbidity, and pH were not developed solely to protect the ocean waters. By definition TBELs are based on the technology available to treat the pollutants. This same technology can be used for discharges to inland surface water or other coastal waters. The Water Quality Control Plan for the San Diego Basin (Basin Plan) contains numeric water quality objectives for pH, but only narrative water quality objectives for grease and oil, suspended solids, and settleable solids. There are no ELGs for brine discharges specifically, but the Ocean Plan Table A TBELs can be used to provide a minimum protection for inland surface waters, enclosed bays and estuaries, and coastal lagoons.

Conclusions and Recommendations

Based on a review of the current state and federal regulations, technology-based effluent limitations (TBELs) have been developed that apply to sewage treatment plants and industrial discharges. TBELs include federally promulgated secondary treatment standards and Effluent Limitation Guidelines (ELGs) as well as State Water Board

adopted Ocean Plan Table A effluent limitations. Brine discharges are industrial discharges for which federal standards have not been promulgated and, thus, Ocean Plan Table A TBELs do apply to brine discharges to the Pacific Ocean. TBELs must be applied to the discharge from a facility prior to any mixing with other effluents or dilution with receiving water.

The application of TBELs to ocean discharges in the San Diego Water Board's jurisdiction is consistent with the above interpretation with a few exceptions. In those few exceptions where the TBELs are inconsistent with state and federal regulations, changes to the NPDES permits to correctly implement the TBELs at each facility will be made during the next permit reissuance process.

In order to implement the narrative and numerical water quality objectives for bays, estuaries and inland surface waters in the San Diego Region, use of the Ocean Plan Table A TBELs for discharges to these waters is an appropriate regulatory approach as a minimum level of protection. It is recommended that Ocean Plan Table A TBELs or other similar limitations be included in NPDES permits in the San Diego Region for bay, estuary, and inland surface water discharges as appropriate.

Table 1
Summary of San Diego Regional Water Board Individual NPDES Permit Regulated Discharges to the Pacific Ocean
December 10, 2009

Facility	Waste Type	NPDES Permit Responsible Party	Ocean Outfall Name	NPDES Order No.	Co-Mingled Effluent	Facility BEL	Co-Mingled TBEL
Joint Regional Plant	Sewage	South Orange County Wastewater Authority	Aliso Creek Ocean Outfall	R9-2006-0055	Yes	Yes	No
Coastal Treatment Plant	Sewage	South Orange County Wastewater Authority	Aliso Creek Ocean Outfall	R9-2006-0055	Yes	Yes	No
Los Alisos Water Reclamation Plant	Sewage	South Orange County Wastewater Authority	Aliso Creek Ocean Outfall	R9-2006-0055	Yes	Yes	No
El Toro Water Recycling Plant	Sewage	South Orange County Wastewater Authority	Aliso Creek Ocean Outfall	R9-2006-0055	Yes	Yes	No
Irvine Desalter Project (Shallow Groundwater Unit)	Treated Contaminated Groundwater	South Orange County Wastewater Authority	Aliso Creek Ocean Outfall	R9-2006-0055	Yes	Yes	No
Irvine Desalter Project (Reverse Osmosis)	Brine	South Orange County Wastewater Authority	Aliso Creek Ocean Outfall	R9-2006-0055	Yes	Yes	No
Jay B. Latham Regional Treatment Plant	Sewage	South Orange County Wastewater Authority	San Juan Creek Ocean Outfall	R9-2006-0054	Yes	Yes	No
Chiquita Water Reclamation Plant	Sewage	South Orange County Wastewater Authority	San Juan Creek Ocean Outfall	R9-2006-0054	Yes	Yes	No
Plant 3A Reclamation Plant	Sewage	South Orange County Wastewater Authority	San Juan Creek Ocean Outfall	R9-2006-0054	Yes	Yes	No
City of San Clemente Reclamation Plant	Sewage	South Orange County Wastewater Authority	San Juan Creek Ocean Outfall	R9-2006-0054	Yes	Yes	No
Segunda Deshecha (M02) Flood Control Channel Urban Runoff Treatment Facility	Treated Urban Runoff	South Orange County Wastewater Authority	San Juan Creek Ocean Outfall	R9-2006-0054	Yes	Yes	No
City of San Juan Capistrano Reverse Osmosis Water Treatment Plant	Brine	South Orange County Wastewater Authority	San Juan Creek Ocean Outfall	R9-2006-0054	Yes	Yes	No
South Coast Water District Groundwater Recovery Facility	Brine	South Orange County Wastewater Authority	San Juan Creek Ocean Outfall	R9-2006-0054	Yes	Yes	No
SONGS Unit 2	Power Plant Cooling Water	Southern California Edison	SONGS Unit 2 Outfall	R9-2005-0005	Yes	Yes	No
SONGS Unit 2	Sewage	Southern California Edison	SONGS Unit 2 Outfall	R9-2005-0005	Yes	Yes	No
SONGS Unit 3	Power Plant Cooling Water	Southern California Edison	SONGS Unit 3 Outfall	R9-2005-0006	Yes	Yes	No
SONGS Unit 3	Sewage	Southern California Edison	SONGS Unit 3 Outfall	R9-2005-0006	Yes	Yes	No
San Luis Rey Wastewater Treatment Plant	Sewage	City of Oceanside	Oceanside Ocean Outfall	R9-2005-0136	Yes	Yes	Yes
La Salina Wastewater Treatment Plant	Sewage	City of Oceanside	Oceanside Ocean Outfall	R9-2005-0136	Yes	Yes	Yes
Brackish Groundwater Desalination Facility	Brine	City of Oceanside	Oceanside Ocean Outfall	R9-2005-0136	Yes	No	Yes
Wastewater Treatment Plant No. 1	Sewage	Fallbrook Public Utility District	Oceanside Ocean Outfall	R9-2006-0002	Yes	Yes	No
Genentech, Inc.	Brine	Genentech, Inc.	Oceanside Ocean Outfall	R9-2008-0082	Yes	Yes	No
Southern Region Tertiary Treatment Plant	Sewage	Marine Corps Base, Camp Pendleton	Oceanside Ocean Outfall	R9-2008-0096	Yes	Yes	No
Encina Power Plant	Power Plant Cooling Water	Cabrillo Power LLC, Carlsbad	Encina Discharge Channel	R9-2006-0043	Yes	Yes	No
Carlsbad Desalination Project	Brine	Poseidon Resources Corporation	Encina Discharge Channel	R9-2006-0085	Yes	Yes	No
Encina Water Pollution Control Facility	Sewage	Encina Wastewater Authority	Encina Ocean Outfall	R9-2005-0219	Yes	No	Yes
Meadowlark Water Reclamation Plant	Sewage	Encina Wastewater Authority	Encina Ocean Outfall	R9-2005-0219	Yes	No	Yes
Shadowridge Water Reclamation Plant	Sewage	Encina Wastewater Authority	Encina Ocean Outfall	R9-2005-0219	Yes	No	Yes

Table 1
Summary of San Diego Regional Water Board Individual NPDES Permit Regulated Discharges to the Pacific Ocean
December 10, 2009

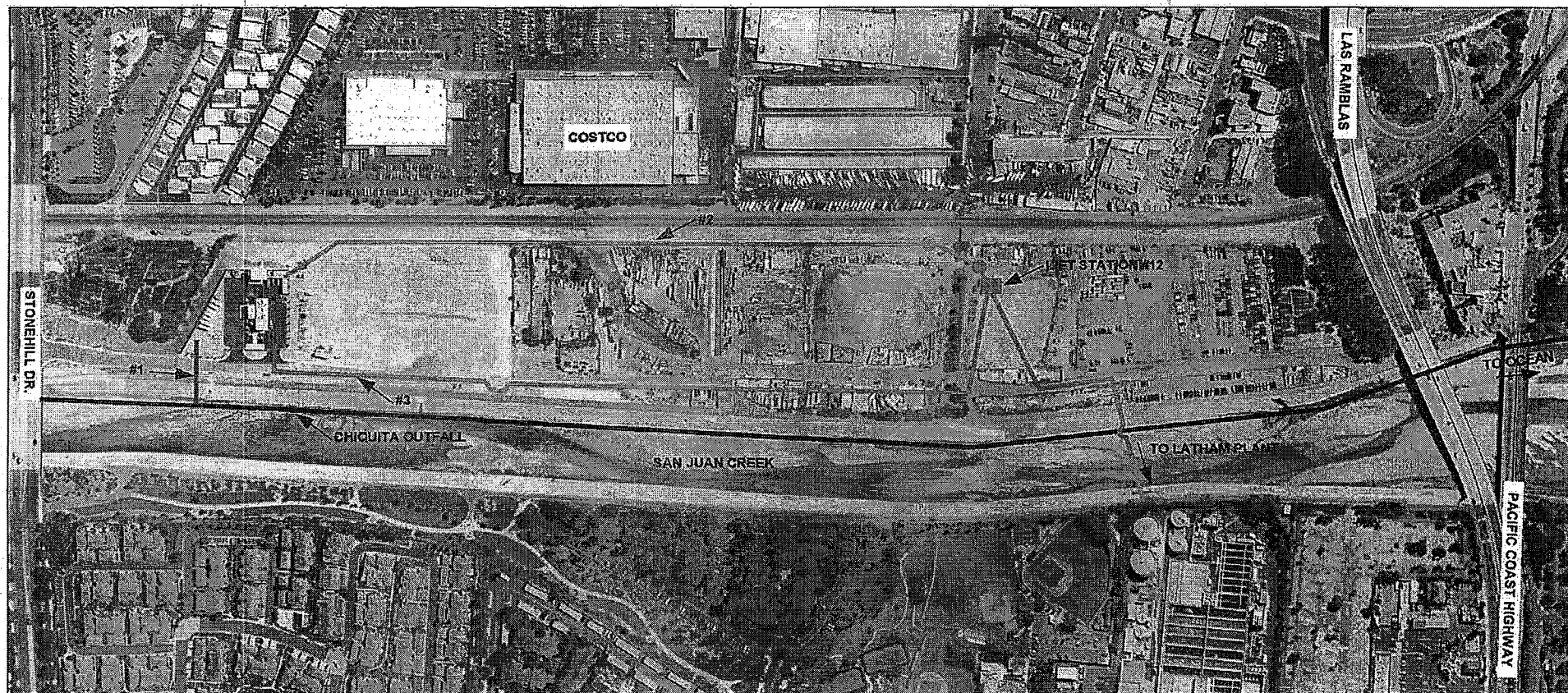
Facility	Waste Type	NPDES Permit Responsible Party	Ocean Outfall Name	NPDES Order No.	Co-Mingled Effluent	Facility TBEL	Co-Mingled TBEL
San Elijo Water Reclamation Facility	Sewage	San Elijo Joint Powers Authority	San Elijo Ocean Outfall	R9-2005-0100	Yes	Yes	No
Hale Avenue Resource Recovery Facility	Sewage	City of Escondido	San Elijo Ocean Outfall	R9-2005-0101	Yes	Yes	No
Industrial Brine Collection System	Brine	City of Escondido	San Elijo Ocean Outfall	R9-2005-0139	Yes	Yes	No
Scripps Institute of Oceanography	Aquaria	University of California	Scripps Institute Outfalls	R9-2005-0008	No	Yes	No
Point Loma Ocean Outfall	Sewage	City of San Diego	Point Loma Ocean Outfall	R9-2002-0025	No	Yes	No
South Bay Water Reclamation Plant	Sewage	City of San Diego	South Bay Ocean Outfall	R9-2006-0067	Yes	Yes	No
International Wastewater Treatment Plant	Sewage	International Boundary and Water Commission	South Bay Ocean Outfall	96-50	Yes	Yes	No

EXHIBIT C



SOUTH COAST WATER DISTRICT

SAN JUAN CREEK PROPERTY



LEGEND

- #1 ——— ORIGINAL DISCHARGE LINE TO THE CHIQUITA OUTFALL LINE
- #2 ——— EXISTING 10" DISCHARGE LINE TO LS #12
- #3 ——— NEW BRINE LINE TO CONNECT TO NEW LIFT STATION #12

EXHIBIT D



South Orange County Wastewater Authority

July 6, 2009

John Robertus
Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Re: Request for amendment to Waste Discharge Requirement Order R9-2006-0054;
NPDES Permit NO. CA0107417

Dear Mr. Robertus:

The South Orange County Wastewater Authority (SOCWA) requests the opportunity to seek an amendment of the San Juan Creek Ocean Outfall NPDES Permit (Order R9-2006-0054). The purpose of the amendment request is to seek a change to the point of compliance monitoring for the City of San Juan Capistrano and South Coast Water District's Groundwater Recovery Facilities. Based on regulatory practices in other regions within the state and across the country, and in light of the recent discussion at the Regional Board hearing on July 1, 2009, we believe the current approach to the monitoring of the discharges from these facilities warrants a thorough reconsideration.

We appreciate the opportunity to work with your staff and look forward to their input. If you have any questions please feel free to contact me at (949) 234-5421.

Very truly yours,

South Orange County Wastewater Authority

Tom Rosales
General Manager

TR/bf

cc: Michael Dunbar – SCWD
Joseph Tait – CSJC

EXHIBIT E



South Orange County Wastewater Authority

August 31, 2009

Mr. John Robertus, Executive Officer
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Re: Request for Permit Modification to Waste Discharge Requirement Order R9-2006-0054
NPDES Permit NO. CA0107417 for the San Juan Creek Ocean Outfall

Dear Mr. Robertus:

The South Orange County Wastewater Authority (SOCWA) calls upon the San Diego Regional Water Quality Control Board to modify the San Juan Creek Ocean Outfall NPDES Permit Order R9-2006-0054. As stated in our July 6, 2009 letter (copy attached), the purpose of the modification is to change the point of compliance monitoring for the City of San Juan Capistrano and the South Coast Water District's Groundwater Recovery Facilities.

The primary factor which compels SOCWA to seek a permit modification is the inconsistent manner in which water quality standards have been applied and the imposition of overly strict standards on local water resource development projects when a blending approach, at the ocean outfall, would adequately ensure compliance with the receiving water quality objectives. Based on regulatory practices in other regions within California, and in light of the Regional Board sentiments expressed at both the May 13, 2009 and July 1, 2009 Administrative Civil Liability Hearings on this matter, we believe the current compliance monitoring approach requires modification.

We appreciate the opportunity to work with your staff on crafting an appropriate amendment to address this issue and respectfully request a schedule and a complete list of documents and/or forms to process our request. If you have any questions please feel free to contact me at (949) 234-5421.

SOUTH ORANGE COUNTY WASTEWATER AUTHORITY

Tom Rosales
General Manager

TR/bf

enclosures (1)

cc: File
SDRWQB Board members

EXHIBIT F

Brennon Flahive

From: Brennon Flahive
Sent: Wednesday, September 30, 2009 11:24 AM
To: Melissa Valdovinos (mvaldovinos@waterboards.ca.gov)
Cc: Tom Rosales; Betty Burnett; Pat Chen; Pat B. Giannone (pgiannone@bawg.com); Steven L. Hoch
Subject: SJCOO Permit Amendment Request

Melissa, I appreciate your returning our phone calls related to our permit amendment requests. I'm disappointed that I was not able to talk with you directly, but based on your phone message, I believe I can make the following conclusions:

- o The Regional Board Staff is not interested in opening up the SJCOO discharge permit to change the compliance points for the Groundwater Desalination Facilities,
- o and that the rejection of our request is based on a finding by the State Board that technically based effluent limits (TBEL) apply to the Groundwater Facilities

(please confirm that this was the gist of your message)

I do not think we are arguing whether TBEL could apply, so much as, in California and around the country these types of projects are often regulated for discharge compliance after mixing with other discharge effluents in the outfalls. We are looking for the opportunity to sit down with staff and discuss ways in which both water quality concerns and excessive liability to important water resource projects can be worked out to the satisfaction of all parties. If it is the Board's decision to reject our request for an amendment, please provide us with that rejection in writing.

Brennon Flahive

*South Orange County Wastewater Authority
Environmental Compliance Administrator
(949) 234-5419
bflahive@socwa.com*

EXHIBIT G



South Orange County Wastewater Authority

October 6, 2009

Mr. Richard Wright
Board Member
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Re: Request for Permit Modification to Waste Discharge Requirement Order R9-2006-0054
NPDES Permit No. CA0107417 for the San Juan Creek Ocean Outfall

Dear Mr. Wright:

We have reviewed your agenda for the October 14, 2009, meeting and in connection with closed session Item "e" under the heading of "Petitions for Review Pending Before State Water Resources Control Board" and we wanted to inform the Board that we have made numerous attempts to engage in dialogue with your staff to modify our NPDES permit to no avail. In our hearings before the Board on May 13, 2009, and July 1, 2009, on our appeal of the mandatory minimum penalties ("MMPs") imposed on South Coast Water District's ("SCWD") groundwater recovery facility ("GRF") for its alleged brine discharge violations, the Board clearly understood that the MMPs arose out of the changes to South Orange County Wastewater Authority's ("SOCWA") San Juan Creek Ocean Outfall NPDES Permit Order R9-2006-0054 ("2006 NPDES Permit") which required point of compliance to be determined at the GRF rather than the outfall. However, the Board concluded that it had no discretion to consider these issues in the MMP proceeding. Notably, a few members of the Board recognized that SOCWA could (and should) seek relief via a permit modification.

Despite our efforts to engage your staff dating back to September 2008 including numerous letters and email correspondence, we recently received a voicemail from Melissa Valdovinos informing us that based on a finding by the State Board that technically based effluent limits (TBEL) apply to the GRF, Regional Board staff is not interested in opening up the NPDES permit to change the compliance points for the GRF.

Given our predicament with respect to the GRF and SCWD's desire to continue operating (and potentially expanding) the facility to offset the State's current water shortage, we would request that our request for modification be given due consideration. As such, we will be submitting a formal request to modify the 2006 NPDES Permit. As cited in our previous correspondence with your staff, it is our belief that the 2006 NPDES Permit contains several errors and misapplication of law. These errors in application obligate the San Diego Regional Water Quality Control Board to modify SJCOO NPDES Permit Order R9-2006-0054.

We respectfully request that you have this matter placed on the agenda for the next Board meeting. We will be filing shortly with the Board various documents supporting our contention that the permit can and should be modified forthwith.

If you have any questions please feel free to contact me at (949) 234-5421.

South Orange County Wastewater Authority



Thomas R. Rosales
General Manager

TR/tn

enclosures

cc via email: Michael McCann, Assistant Executive Officer
Lori Costa, Executive Assistant

EXHIBIT H

Brennon Flahive

From: Brennon Flahive
Sent: Monday, October 19, 2009 11:37 AM
To: Mike McCann
Subject: RE: SOCWA BRINE DISCHARGE--NPDES PERMIT REQUEST MODIFICATIONREQUEST

Interesting that they don't want us to move forward with a formal application to modify the permit.

-----Original Message-----

From: Mike McCann [mailto:MMcCann@waterboards.ca.gov]
Sent: Monday, October 19, 2009 9:59 AM
To: Tom Rosales
Cc: Catherine Hagan (George); David Barker; John Robertus
Subject: SOCWA BRINE DISCHARGE--NPDES PERMIT REQUEST MODIFICATIONREQUEST

Mr. Rosales,

I am writing this email message to you on behalf of John Robertus, the Regional Board Executive Officer.

This is in regard to your most recent letter dated October 6, 2009 regarding SOCWA's request to modify NPDES Order No. R9-2006-0054 to change the point of compliance for South Cost Water District's ground water recovery facility (GRF) brine discharge.

The compliance point for the brine discharge was established by the Regional Board at the GRF rather than at the combined ocean outfall compliance point. The Board has taken this position because discharges from reverse osmosis treatment systems for water supply augmentation projects are broadly classified as "industrial discharges" and are, therefore, subject to the Table A Effluent Limitations contained in the State Water Board's Ocean Plan. The Table A Effluent Limitations establishes the minimum level of treatment acceptable under the Ocean Plan and defines the reasonable treatment and waste control technology that is applicable to the GRF brine discharge. These Effluent Limitations are considered technology based limitations, and thus the point of compliance must be established in the NPDES permit prior to commingling with any other waste stream.

The Regional Board is currently conducting a review of SOCWA's permit modification request(s) dated July 6, 2009 and August 31, 2009. SOCWA is concerned that the Ocean Plan Table A effluent limitations are overly strict and are inconsistently applied to waste discharges from local water resource development projects. The Board's review includes an analysis of the consistency of application of the Table A Effluent Limitations to brine discharges within the San Diego Regional Board's jurisdiction. I anticipate that a final written response to your request for a permit modification will be sent to you by approximately mid November 2009. I suggest that SOCWA hold off on submitting a formal application to modify the NPDES permit until the Regional Board staff assessment is complete.

In the meantime if you have any questions or want to discuss this matter further, please contact Mr. David Barker via e-mail at dbarker@waterboards.ca.gov or via phone at (858) 467-2989.

Thank you,

Michael P. McCann
Assistant Executive Officer and
Ombudsman
Telephone: (858) 467-2988
Fax: (858) 571-6972

EXHIBIT I

Patricia J. Chen

From: Brian Kelley [BKelley@waterboards.ca.gov]
Sent: Tuesday, January 05, 2010 10:23 AM
To: Patricia J. Chen
Cc: 'Pat Giannone'; 'Steven L. Hoch'; 'Betty Burnett'; David Barker
Subject: Re: draft NPDES Permit Development Guide



guide.doc (4 MB)

Pat,

Attached is an electronic copy of the document referenced in my 12/10/2009 memo. I recently checked with State Water Board staff and they indicate that this document was never finalized and is only available to assist Regional Water Board permit writers in developing appropriate permit language.

Brian Kelley
Senior Engineer
San Diego Water Board

Please take the time to fill out our customer service survey located at <http://www.calepa.ca.gov/Customer/>.

Brian D. Kelley
Senior Engineer
San Diego Regional Water Quality Control Board
(858) 467-4254

>>> "Patricia J. Chen" <pchen@miles-chen.com> 12/31/2009 12:36 PM >>>
Brian,

We are in receipt of your December 10, 2009 memo to David Barker regarding the application of technology-based effluent limitations for discharges to the Pacific Ocean and we are having trouble locating one of the documents you cited to - a draft NPDES Permit Development Guide issued by the State Water Board in August 2005. Can you email me either a copy of this document or the weblink to this document?

Thanks so much, and have a happy new year!

Pat

Patricia J. Chen, Esq., LEED AP
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